

Barigye v. Gonzales, 03-73054

**AUG 15 2006**

KLEINFELD, Circuit Judge, dissenting:

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

Barigye had many hearings, which were filled with inconsistencies. He testified inconsistently even as to his name from one hearing to the next. His testimony also varied on how well he could understand English, as did his witnesses's testimony. It was hard for the immigration judge to get a straight answer from him on when he left college. The immigration judge gave the petitioner two half-days for his hearing, which is much longer than the usual hearing. After numerous adjournments, the more petitioner testified, and the more the judge patiently listened and assisted in trying to clear up confusion, the harder it became even to tell what petitioner's name was, let alone what had supposedly happened to him and when. He had used a name that he testified was false on the earlier documents he'd filed in United States immigration proceedings.

Eventually, the judge concluded that "he has no credibility." But the judge allowed him to testify in case his lawyer could do something to establish a case despite the credibility problem. Eventually, the judge said "I have heard enough of the respondent's tell-tales, and they are never ending stories. The bottom line is,

the Court concludes that the respondent is the same person on the passport that he used to come to the United States. The Court does not believe that he has established that he is Matovu or some other person. His entire application for relief is based upon his relationship to Matovu, a family of freedom-fighters or rebels, but all the documents that have any credibility show that he is someone else, and the Court finds that he is Allan Barigye-Byakwaga – – Allan Blake Byakwaga-Barigye, I should say, and as such, the Court will deny any applications for relief to that person who is identified in the documents. I'm not having a hearing for anyone else named Matovu because there's no evidence that he exists, and as I indicated earlier, the respondent's testimony alone is insufficient because the respondent is not credible because if I – – the respondent has lied to his doctors, he lied to his employers, and has failed to correct the mistake in any way prior to being arrested and detained by the Immigration Service.”

Even though the judge had said clearly at that point, after more than 400 pages of hearings, that the petitioner had no credibility on his identity, he nevertheless allowed more. Additional evidence was introduced.

In his brief, petitioner accuses the immigration judge of “intransigent refusal

to allow full development of the record,” and that due process argument is the basis for the majority’s position. But the brief does not say what additional evidence the petitioner sought to put in, or where, exactly, the petitioner was improperly cut off as he attempted to put in evidence. It does appear from context as though petitioner wanted to put on more evidence that a man named Matovu had been tortured and the immigration judge prevented him from doing so. But, by the time the immigration judge prevented him from admitting this evidence, he had already concluded based on substantial evidence that petitioner was not in fact Matovu.

I respectfully dissent because additional evidence about Matovu could not have mattered. As the BIA noted, even if at some point, the petitioner came up with evidence that he really was Matovu, “this does not diminish the fact that the respondent lied in the past” in his immigration proceedings. And there was a substantial basis on the record for the adverse credibility decision because of “[t]he petitioner’s past misrepresentations regarding his identity and his attendance at school,” as well as his own self-contradictions.